

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by)

**INTERNATIONAL UNION
OF OPERATING ENGINEERS**)

from the Executive Officer's June 5, 2001)
approval of Contracts between the California)
Department of Food and Agriculture's 22nd)
District Agricultural Association and)
Maintenance Staffing, Inc. and A Plus)
Personnel, Inc.)

BOARD DECISION

PSC NO. 01-05

December 18, 2001

APPEARANCES: Jeffrey Boxer, Legal Assistant, on behalf of the International Union of Operating Engineers; Sandra Tang, Graduate Legal Assistant, on behalf of the California Department of Food and Agriculture's 22nd District Agricultural Association.

BEFORE: Ron Alvarado, President; William Elkins, Vice President; Florence Bos and Richard Carpenter, Members.

DECISION

The International Union of Operating Engineers (IUOE) has appealed to the State Personnel Board (Board or SPB) from the Executive Officer's June 5, 2001 decision, which approved the contracts (Contracts) entered into by the California Department of Food and Agriculture's (CDFA's) 22nd District Agricultural Association (22nd DAA) with Maintenance Staffing, Inc. and A Plus Personnel, Inc. (collectively, the Contractors). In this decision, the Board finds that CDFA has adequately shown that the Contracts are justified under Government Code § 19130(b). The Board, therefore, sustains the Executive Officer's decision approving the Contracts.

BACKGROUND

District agricultural associations were created for the purpose of holding fairs, expositions and exhibits. Pursuant to the Contracts, the Contractors have agreed to provide “occasional, temporary custodians, laborers and stall cleaners for the 22nd DAA/Del Mar Fairgrounds” on a “year-round, event driven basis.” The 22nd DAA annually holds events such horse shows, concerts, festivals, conventions, trade shows, seminars and private parties that vary in duration. The longest event is the Del Mar Fair, which lasts approximately 20 days. The Contractors provide janitors, laborers, gardeners and maintenance aides for these events, depending upon the 22nd DAA’s needs. IUOE asserts that such work can be adequately and competently performed by civil service employees in Bargaining Unit 12.

PROCEDURAL HISTORY

By letter dated July 24, 2000, IUOE asked SPB to review the Contracts for compliance with Government Code § 19130. On August 28, 2000, CDFA submitted its written response to IUOE’s review request. On September 28, 2000, IUOE submitted its reply to CDFA’s response. The Executive Officer issued his decision approving the Contracts on June 5, 2001. The Board has reviewed the record, including the written arguments of the parties, and heard the oral arguments of the parties, and now issues the following decision.

ISSUES

Are the Contracts justified under Government Code §§ 19130(b)(1) and/or (10)?

DISCUSSION

Government Code § 19130(b)(1)¹

CDFA asserts that the Contracts are justified under Government Code § 19130(b)(1), which permits a state agency to enter into a personal services contract with a private entity when:

The functions contracted are exempted from civil service by Section 4 of Article VII of the California Constitution, which describes exempt appointments.

Subdivision (l) of Section 4 of Article VII of the California Constitution exempts from the civil service:

Officers and employees of district agricultural associations employed less than 6 months in a calendar year.

According to CDFA, before entering into the Contracts, the 22nd DAA retained “119-day employees,” i.e., employees who were hired for less than 6 months in a calendar year, to perform the contracted services. CDFA asserts that the Contracts call for the Contractors to perform the services that were once performed by the 119-day employees and the work time for the contracted employees does not add up to six months in a calendar year.

IUOE asserts that the Contracts permit the Contractors to perform not only the unskilled labor performed by former 119-day employees, but also skilled work previously performed by members of Bargaining Unit 12, which IUOE represents. IUOE asserts that, because CDFA has not adequately shown that all of the work performed by the Contractors was only unskilled labor performed by the 119-day employees, there is an issue of material fact that the Board should send to an evidentiary hearing for review. The Board rejects IUOE’s argument. The exemption language in Section 4(l) of Article VII of the California Constitution is very broad: it exempts from the civil service all officer and employees of district agricultural associations who work less than 6 months in any calendar year. This broad exemption does not make a distinction between skilled and

¹ As a preliminary matter, IUOE contends that CDFA, in its initial justification filed in support of the Contracts, did not assert that both Contracts were justified under Government Code §§ 19130(b)(1). In its cover letter dated August 28, 2000, CDFA asserted that its contract with Maintenance Staffing, Inc. was justified under Government Code § 19130(b)(10) and that its contract with A Plus Personnel, Inc. was justified under Government Code § 19130(b)(1). In an August 18, 2000 memorandum attached to that cover letter, CDFA asserted that both Contracts were executed pursuant to Government Code section 19130(b)(10) and that the contract with A Plus Personnel, Inc. was also executed pursuant to Government Code § 19130(b)(1). While the other materials filed with that cover letter did not explicitly state that its contract with Maintenance Staffing, Inc. was executed pursuant to Government Code section 19130(b)(1), the two contracts are very similar, both call for temporary janitors, general laborers and stall cleaners for the 22nd DAA/Del Mar Fairgrounds, and CDFA argued that the 22nd DAA used to hire 119-day employees to perform the work that was contracted under both Contracts. Because CDFA made the same factual assertions with respect to both Contracts and the Contracts are, in essence, identical, the Board finds that it was appropriate for the Executive Officer to find that both Contracts were justified under Government Code § 19130(b)(1).

unskilled labor; instead, it applies to all district agricultural association employees who may work less than 6 months in a calendar year, whether they perform skilled or unskilled work. Pursuant to Government Code § 19310(b)(1), the 22nd DAA may contract all services that any of its employees who work less than 6 months in a calendar year may perform.

CDFA has adequately shown that the work that is being contracted would otherwise have been performed by employees who worked less than 6 months in a calendar year. CDFA has, therefore, adequately shown that the Contracts are justified under Government Code § 19130(b)(1).

Government Code § 19130(b)(10)

While CDFA has adequately shown that the Contracts are justified under Government Code § 19130(b)(1), CDFA also asserts that the Contracts are justified under Government Code § 19130(b)(10), which authorizes a state agency to enter into a personal services contract with a private entity when:

The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

In order to comply with Government Code § 19130(b)(10), CDFA must show that the Contracts meet both of its conditions: (1) the contracted services are either urgent, temporary or occasional; and (2) the purpose of those services would be frustrated by the delay in hiring civil service employees to perform them.

CDFA asserts that the contracted positions are of such a temporary and occasional nature that the delay incumbent in trying to fill them pursuant to the civil service would frustrate their very purpose. In the past, the 22nd DAA has had difficulty filling these temporary positions, particularly the janitor and maintenance aide positions. For example, during the 1999 Fair, the janitor positions were only 50% filled, and during many horse events, the maintenance aide positions were often not filled because they typically lasted only 3 days and required employees to clean out the stalls. The 22nd DAA used many recruitment approaches, such as placing job orders with colleges; posting ads at Carlsbad Hiring Hall, in the San Diego Union-Tribune newspaper and on a website; using an employment hotline; posting openings at the Orange County Fairgrounds; and participating in two career fairs. All these approaches brought very poor responses. Due to the extreme difficulty in trying to hire for 119-day positions for the 1998 and 1999 years and the major problem with maintaining enough staff to keep up sanitation, in order not to jeopardize the health of patrons and employees at events, the 22nd DAA decided to contract for workers.

IUOE asserts that the Contracts are not justified under Government Code section 19130(b)(10) because the 22nd DAA has failed to show that, in the past, it had any difficulty retaining sufficient civil service personnel to fill the positions of laborers, gardeners and supervisors. IUOE also argues that the language of the Contracts does not adequately restrict the types of work that may be contracted and there is, therefore, a genuine issue of material fact as to whether the 22nd DAA is contracting out skilled maintenance work not specified in the Contracts.

The issue that IUOE has raised with respect to the contracting of skilled and unskilled work is not material to the question of whether the contracts are justified under Government Code §

19130(b)(10). The Board finds that given the 22nd DAA's past difficulties in hiring sufficient employees to perform the necessary services and the very short-term nature of the services that are contracted, CDFA has adequately shown that the delay incumbent in retaining employees under the civil service to perform the contracted services would have frustrated their very purpose. CDFA has, therefore, shown that the Contracts are also justified under Government Code § 19130(b)(10).

CONCLUSION

The Board finds that CDFA has adequately shown that the Contracts are justified under Government Code §§ 19130(b)(1) and 19130(b)(10). The Board, therefore, sustains that Executive Officer's decision approving the Contracts.

STATE PERSONNEL BOARD²

Ron Alvarado, President
William Elkins, Vice President
Florence Bos, Member
Richard Carpenter, Member

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I hereby certify that the State Personnel Board made and adopted the foregoing Decision at its meeting on December 18, 2001.

Walter Vaughn
Executive Officer
State Personnel Board

[IUOE-CDFA-01-05-dec]

² Member Sean Harrigan did not participate in this decision.